

REMARKS

Applicants have carefully reviewed the Office Action mailed on December 22, 2010. Applicants respectfully traverse (and do not concede) all objections, rejections, adverse statements, and adverse assertions made by the Examiner. With this amendment, claims 50 and 61 are amended. No new matter is added. Please cancel claims 51-52 and 62-63 without prejudice. Claims 49-50, 53-61, and 64-68 are presented for examination.

Claim Rejections Under 35 U.S.C. §112

Claims 49-68 are rejected under 35 U.S.C. §112, first paragraph, as failing to comply with the written description requirement. Applicants respectfully traverse the rejection.

Regarding claims 49, 60, and 68, the Office Action indicated that “there is no discussion of the thickness of the outer layer of the balloon in the specification” and that “[i]f applicant is relying upon the drawings (specifically elected Figure 2) to support this limitation, the examiner notes that, as no mention that the figures are drawn to scale is given, the drawings can not be relied upon to support [the limitations of these claims].” We respectfully disagree.

MPEP §2163 provides the guidelines for the examination of application under 35 U.S.C. §112, first paragraph. To satisfy the written description requirement, a patent application “must describe the claimed invention in sufficient detail that one skilled in the art can reasonably conclude that the inventor had possession of the claimed invention”. MPEP §2163-1. “An applicant shows possession of the claimed invention by describing the claimed invention with all of its limitations using such descriptive means as words, structures, figures, diagrams, and formulas that fully set forth the claimed invention.” Id. citing Lockwood v. American Airlines, Inc., 107 F.3d 1565, 1572, 41 USPQ2d 1961, 1966 (Fed. Cir. 1997). (emphasis added).

In other words, the MPEP indicates that the written description requirement may be satisfied by the figures.

In this case, the claimed invention can be seen in the figures (e.g., Figure 2). For example, claim 49 recites that the inner layer has a greater thickness in the body portion than in the proximal waist and that the outer layer has a lesser thickness in the body portion than in

the proximal waist. These features are evident in Figure 2. This demonstrates that Applicants has possession of the claimed invention. Regardless of whether or not the figures are drawn precisely to scale, relative differences in the thickness in the various portions of the claimed balloons can be seen in the drawings, further demonstrating that Applicants had possession of the claimed invention. Based on these remarks, Applicants respectfully submit that the rejection of claims 49, 60, and 68, as well as those claims depending therefrom, should be withdrawn.

Regarding claim 50 and 61, the Office Action indicated that these claims recite “wherein a sum of the thickness of the inner and outer layers is constant over the length of the balloon.” Applicants believe that these limitations are proper and in compliance with 35 U.S.C. §112, first paragraph. However, in the interest of furthering prosecution, these claims are amended to recite that a sum of the thicknesses of the inner and outer layers is substantially constant. Applicants respectfully submit that this amendment overcomes the rejection.

Regarding claims 51 and 62, without conceding the merits of the rejection, please note that claims 51 and 62 are now canceled without prejudice, rendering the rejection moot. Applicants reserve the right to pursue these claims or claims of a similar scope in the future.

Regarding claims 52 and 63, without conceding the merits of the rejection, please note that claims 52 and 63 are now canceled without prejudice, rendering the rejection moot. Applicants reserve the right to pursue these claims or claims of a similar scope in the future.

Conclusion

Further examination and withdrawal of the rejections is respectfully requested. It is respectfully submitted that all pending claims are now in condition for allowance. Issuance of a Notice of Allowance in due course is also respectfully requested. If a telephone conference might be of assistance, please contact the undersigned attorney at (612) 677-9050.

Respectfully submitted,
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By their Attorney,

Date: _____

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